Decision in equity suit &c

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MEDICAL COURTS AND JUDICIAL COUNCILS REVERSED.

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A FULL HISTORY OF THE CASE.

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To the Medical Profession.

The case of Varian and Barr vs. Cotton, out of which grew the suit in equity of John C. Cotton vs. Theod. J. Young, et. al, members of the Medical Society of Crawford County, has been before the various Medical Courts of the State for three years previous to and including part of 1885, and in an equity court since September of that year, and has attracted an unusual amount of attention, not only from the members of the profession, but from the laity also.

Since the latter suit has been recently decided in my favor, and is believed to be in some respects unique, I have deemed it of sufficient importance to call the attention of the profession to a brief history of the case and to the lessons taught by this protracted controversy.

The difficulty originated in 1881, when charges were preferred against me in the Medical Society of Crawford County by a personal enemy.

One specification only out of three was sustained, viz: "acting as agent for a hair tonic;" the remaining two being decided in my favor by a unanimous vote.

The "hair tonic" was a non-patented preparation, the constituents of which were announced in a public lecture in the city of Meadville by the proprietor, a class-mate of mine more than forty years before; so that had it been a medicine at all it was neither a patent medicine nor a secret nostrum, the use of which the rules of medical societies condemn.

For so grave an infraction of the code of ethics, a vote of censure prevailed in the society by a small majority, after I had publicly stated that "I had not wilfully violated any medical law or the code of ethics when I handed my friend's hair tonic to his customers, during his absence from my office, and I did not now believe that I had violated any provision of the code; yet in deference to the better judgment of a majority of the

members of the Society I would discontinue all connection with the offensive article."

To remove that vote of censure an appeal was taken to the higher medical courts.

When in due course the case was reached in the Judicial Council of the State Medical Society, at Titusville in May, 1882, and during the hearing thereof, with the evident design of influencing its decision, the attorney for the Society introduced a false and libelous statement, signed or endorsed by himself, Drs. Varian, Barr, and Young, all residents of Titusville. This statement related to words spoken in debate by me one year previously, and alleged to be in contempt of the Society, although at the time of their utterance I had not been called to order by the presiding officer.

This statement was entirely irrelevant to the issue before the Council, and objection was respectfully urged against the introduction of a new charge and new evidence, (which the paper in fact was,) in an appellate court where no preparation for defense was possible. The objection, although founded in equity, reason, and common sense, was overruled, and the paper admitted in violation of the rules of every court of law.

I immediately on the floor of the council chamber publicly denounced the statement as *unqualifiedly false*, and have ever since so characterized it, publicly and privately, formally and and informally. But my individual assertion was pitted against the written statement of four gentlemen before a court composed of those who were personally strangers to me.

At the next meeting of the County Society in Meadville, July, 1882, I preferred formal charges against the four Titusville members who had signed or endorsed the libelous paper, "for conduct unbecoming medical men and gentlemen."

As the County Society met alternately in Meadville, the county-seat, and Titusville, between which places there had existed a jealousy and antagonism, social as well as political, for many years, due largely to the fact that Titusville had not become the county-seat of Petroleum County, which was charged principally to Meadville influence ; and further, as the distance between those places was fifty miles by rail, with a

tedious change station between, and Titusville was eighty miles distant from the western limits of the county, the membership in attendance varied considerably at every alternate meeting, amounting to almost two separate societies.

At the next meeting in Titusville, October, 1882, when but two members were present from Meadville and none from the western portion of the county, instead of assisting me to secure an investigation, as I erroneously supposed that they would, or *imperatively demanding* one, as innocent, honorable gentlemen invariably do when accused of dishonorable actions, the four accused members voted solidly to dismiss my charges, their votes and influence being necessary to carry the motion. They thus formally declared that I should not have an opportunity to prove my accusations. Modesty, or a high sense of honor would have suggested to most gentlemen the impropriety of voting at all on a motion to *quash an indictment against themselves* for falsehood.

In the intervening time between preferring the charges and the next meeting of the Society, I used every means possible to procure the original paper presented to the Judicial Council; but in this I failed, most probably for the reason publicly given in the Society by Doctor Varian, viz: "That it was no part of the duty of an accused party to furnish evidence to convict himself"; thereby conceding the fact that the paper did contain such evidence.

There was much discrepancy in the statements of the four accused in reference to the fate of the original paper. While one assured the Society that every effort was being made to procure it, another stated before the Society that "the attorney probably had taken it home and his boys had made wads of it"; while still a third privately asserted that "Cotton would give considerable to get hold of that paper," but with a significant nod, added, "he never will see it." A fair inference from all these conflicting statements was, that the illegitimate offspring of their fertile imaginations had been cremated amidst the unseemly levity, it may be, of its unnatural parents. One thing must be apparent to every one, what no one interested in securing it was for a moment idiotic enough to doubt,

that had its allegations been true no difficulty would have been experienced in securing a copy at least, even if the boys had made wads of the original, as its contents were not so abstruse or elaborate but that its authors could have duplicated it at any time had they so desired.

After my charges had been so summarily disposed of in the Titusville meeting, as above related, in order to throw dust in the eyes of the Society, and divert attention from themselves and their questionable course, two of the accused, Doctors Varian and Barr, preferred retaliatory or counter charges against me, with the further obvious design of having their charges heard and me disposed of before I could renew mine against them. This scheme, however, proved abortive, as I took occasion to prefer the same charges three different times in the Society, and asked the poor privilege of proving them ; but each time they were dismissed by the votes and influence of the accused parties, the last time at a meeting held at Titusville, *by their votes alone*, not a single other member voting with them to deny me the privilege of substantiating so grave an accusation.

After my charges had been dismissed the third time, in giving my reasons for declining to prosecute the charges against the accused parties in the higher courts, I made the following statement to the Society : "I am justified in the conclusion and perfectly satisfied that my charges have been abundantly substantiated by the *irresistible logic of events*, 'confirmation strong as proofs of holy writ' ; and if there be one member of this Society who, in the light of the above facts does not believe that these gentlemen falsified in that statement before the Judicial Council, such a member would not believe that they did, although one rose from the dead and assured him of the fact."

The charges against me were tried the first time *ex parte* in a Titusville meeting, by the *four accused members and two others*, constituting the entire voting force of that meeting ; while I was confined to my bed by a painful illness, of which fact the Titusville parties had been fully informed by telegrams

and certificates of attending physicians. This latter circumstance was stoutly denied by the Titusville faction for a time, but in order to save the unexpended balance of their reputation for truth and veracity, whatever that might be, it was thought inexpedient to further deny a fact so easily susceptible of proof.

The charges and specifications were sustained, however, and I was formally thrown out by the six unanimous votes referred to.

One circumstance will show the utter recklessness of these gentlemen, and the means they were capable of resorting to to accomplish their designs. At the same meeting, April, 1883, after passing the vote of expulsion, these six members adopted a most offensive minute concerning me, and at the close of the meeting *approved their own minutes*. At the next meeting, in Meadville, these minutes appeared in a permanent form, copied in the Secretary's book, and when Doctor Calvin, a friend of mine, arose to object to the outrageous statements and false accusations of those minutes, he was called to order by the President, Doctor E. M. Farrelly, of Townville, one of the six members who, on the final ballot voted for expulsion, with the announcement that "those minutes had been approved at the last meeting in Titusville, and that, consequently, any remarks on them were out of order."

This procedure and ruling was so at variance with the recognized custom of all parliamentary bodies that even the Titusville faction, at the next meeting, was compelled to repudiate it as indefensible. But the procedure and ruling had accomplished its design, and then of course it was indefensible.

The Board of District Censors, on appeal, reversed the action of the Society, restored me to membership, and remanded the case to the Medical Society of Crawford County.

The case was tried a second time *ex parte* by the Titusville faction, none of my friends being present, at an irregularly called special meeting, where only one member of the Board of County Censors was present ; which Board is the only judicial body authorized by the constitution and laws of the Coun-

ty Society to try causes of this nature. (See decision of Court in Appendix.)

Acting under the advice of a prominent member of the Board of District Censors, however, the Society, without even the formality of a report from its Judicial Board, proceeded to try the case itself, with the same result, of course, as at the previous *ex parte* trial.

When a second appeal was brought before the Board of District Censors, that astute body caricatured the famous police court of Dogberry and Verges, by producing a rule that they had manufactured for the occasion, and which covered the advice previously given to Titusville by the District Censor referred to; defining, without warrant of law, what in their judgment was the powers of a county medical society, and embodied in what they were pleased to designate as "Rule No. 3," which was as follows:

"The County Medical Society is a power above that of its own Censors. It has, therefore, the right to take charges preferred against a member out of their hands and dispose of them as it may deem just and proper within the limits of the law."

In other phrase, the people of this country is a power above that of its own rulers, and have therefore the right to usurp the constitutional functions of those rulers, try causes for the judiciary, enact laws for the legislature, or enforce them for the Executive within the limits of the law. As the Society had simply acted in accordance with this *ex post facto* law, its action was of course sustained.

On a further appeal to the Judicial Council of the State Medical Society, which met in Philadelphia, May, 1884, the action of the District Censors and of the County Society was reversed, I was again restored to membership, and the case once more remanded to the Medical Society of Crawford County. At this session of the Council much irrelevant matter and personal vituperation were permitted in the argument, altogether unbecoming the dignity of a grave judicial body, in spite of a respectful protest.

The case finally came up for hearing before the Board of County Censors in January, 1885, and after a full and patient investigation, *both sides for the first time being heard*, the Board made a report to the Society fully exonerating me from all censure, dismissing the charges ; in other words, ignoring the bill. At the instigation of the four accused Titusville members, however, and on motion of one of them, the action of the Censors itself was ignored, and the Society, not by authority of law, but by the edict of the Board of District Censors, once more proceeded to try the case *de novo*.

After this farce had been concluded, the accused Titusville parties, including the two prosecutors in this case, controlled not only their own votes against me, but those of two other members, Messrs. Farrelly and Strayer, and I was again thrown out by six votes to three, the balance of the Society declining to vote.

A dozen applicants for membership, friends of mine, who had been knocking at our doors for admission for nearly a year, and whose initiation fees had all been paid for months previously, were compelled to dance attendance in the anteroom, by the strategy of the accused four, until the case was decided against me, when they were graciously admitted to membership.

The District Censors, on appeal, experienced no difficulty in deciding that the laws of the Board, as epitomized in Rule 3, like those of the Medes and Persians, could not be changed and the action of the Society was therefore sustained.

An appeal was again taken to the Judicial Council of the State Medical Society, which convened in Scranton, May, 1885. On my arrival there, before the opening of the Society, I found the Judicial Council already in session "for the *purpose of organizing*" and two of the accused Titusville members, one of whom was Doctor Varian, as I was informed and believe, closeted with them.

The Council was composed at this session of five members, three of whom, Drs. H. H. Smith, Traill Green, and J. L. Stewart, were ex-Presidents of the Society—as Doctor Varian, one of the prosecutors in this case was—although the Baron

Munchausen, *facile princeps* of the Medical Society of Crawford County.

When my appeal was called, "the atmosphere of the Council Chamber was heavy with prejudice against me, without those safe-guards which human experience has shown are necessary to secure justice from an impartial court.*" The atmosphere, like the darkness of Egypt, could be felt.

During the preliminary discussion as to what line of argument would be permitted by the Council, the President, Dr. H. H. Smith, without consulting his associates or hearing my printed brief or argument against the constitutionality of Rule 3, decided "that the Board of District Censors had a right to make any rule for their own government which they deemed expedient, without interference by the Council."

Rule 3, although it contravened the fundamental law of our entire organization, and contained the ridiculously absurd proposition that an illegal act could be performed with the sanction of law, was claimed as coming within this ruling. As my whole case hinged largely on the unconstitutionality of Rule 3, such a ruling practically decided it against me.

As a protest against such a travesty of justice, and to vindicate the reputation of Dogberry and Verges from invidious comparison, suit was brought in an Equity Court, where the rights of a Baron Munchausen are much the same as those who are not Barons; and where the Goddess of Justice is blindfold and not peering through ex-Presidents' glasses, skillfully adjusted to produce a squint.

Some important deductions can be drawn from this controversy and its termination, among which are the following:

I. Gentlemen eminent in the medical profession, are frequently poor lawyers and worse judges, incapable of weighing evidence, and ignorant of the rules which govern judicial proceedings. Such men are eminently unfitted for judicial positions.

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*Report to the Philadelphia County Medical Society by its rejected delegation to American Medical Association at St Louis, Mo., May, 1886.

II. The laws which are adopted for the government of voluntary associations, and to which all have given assent, must be respected and obeyed in all judicial proceedings, or the Equity Courts will interfere and compel that respect and obedience.

III. No judicial body can issue a ukase in contravention of medical law, and enforce its observance, as was attempted in case of Rule 3, no difference what medical authority endorses it.

IV. No chairman of a judicial body can usurp the functions of the court over which he presides, and decide a controverted point in medical law by inspiration; but the court must give the matter a patient hearing and wait for the evidence before rendering a decision.

V. Individual rights of private members must be as sacred in the eyes of medical law as that of ex-Presidents of the State Society.

VI. All judicial proceedings in medical courts must conform more closely to the rules of courts of law, which the experience of ages has demonstrated are best suited to maintain the majesty of law and the rights of individuals.

JOHN C. COTTON, A. M., M. D.

Meadville, Pa., March 28, 1887.

The facts in the foregoing statement, as far as they are matters of record, can be verified by the minutes of Crawford County Medical Society; other statements, not of record, can be substantiated by unimpeachable witnesses. J. C. C.

APPENDIX.

JOHN C. COTTON, *vs.* T. J. YOUNG, ET. AL.

Court of Common Pleas Crawford County, sitting in Equity, No. 3, September Term, 1885.

In Exception to Master's Report:

The preliminary question to be determined in this case, is as to the jurisdiction of a Court of Equity to entertain this bill and grant the prayer for relief. The act of 1836 and its supplements gives the Court of Common Pleas plenary power in the supervision and control of all unincorporated societies or associations, and like power to prevent and restrain the commission and continuance of acts contrary to law and prejudicial to the rights of individuals.

The defendants here are an unincorporated association, and the plaintiff complains that they have committed or are about to commit an act which is prejudicial to his rights and wholly contrary to law. Hence it is most evident that this Court has complete jurisdiction over the parties and the subject matter. It were a waste of learning and research to cite authority for so plain a proposition.

The claim made by defendants that the writ of mandamus is the proper and exclusive remedy, is untenable, for it is right in the teeth of the fact, that the act of assembly in terms confines this remedy to public officers, and to municipal and other corporations, and therefore such a writ cannot issue against any other class.

The contention of the defendants is further made that the injury of which the plaintiff complains has already been done him, and therefore no injunction can be available to redress his wrongs.

An injunction, in its ordinary sense, is a command, and this command may be either to do or to refrain from doing, some particular thing. An injunction, in its legal sense, is a remedial writ, issuing by order of a Court of Equity, commanding a defendant to perform some act, or restraining a defendant from the commission or continuance of some act. An injunction may therefore be prohibitory, or it may be mandatory, in which latter event it is very like a mandamus, both in name and character. An injunction of this latter kind is one that

compels a defendant to restore things to their former condition, and virtually directs him to perform an act, and the order need not be even direct in form, for the end may be reached by an order apparently prohibitory. The remedy can be applied by either means, as may be deemed most expedient.

I find nothing in the several prayers for relief in plaintiff's bill that is repugnant to any of the principles or the practice of Courts of Equity.

It is a well known legal principle that voluntary unincorporated societies or associations may adopt a constitution and laws for its own government and for the government of its members, and this is the law of its being, and any one who voluntarily becomes a member of such organization, is bound by such law, and must submit to all judgments and decrees given thereunder. Yet this principle is subject to one or more very important qualifications. The governing laws of such a body, while they may be unfair or despotic, yet they must be reasonable and not absurd; they must not violate natural right, and they must not be repugnant to the constitution or the laws of the State.

Another important limitation to the absolute authority of such a body is this:

The association itself must follow and obey its own laws and rules. If it undertakes to discipline and punish a member, it must do it in the manner, and only in the manner, directed by its governmental rules. If such an association keep within these bounds, courts of justice will not interfere with its edicts and decrees, even if they are arbitrary and tyrannical; yet courts of justice have such a supervision over it as to inquire whether or not any specific action is within or without the boundaries of law and reason. When a complaint is made of illegal conduct, such as the unlawful trial and punishment of a member of such a society, a Court will always examine the law of the body and the record of its trial; and if the one does not accord with the other, it will apply a remedy for the wrong, and compel the association to obey its own laws by directing the injured party to be reinstated in those rights of which he has been unjustly deprived. I do not doubt that in some cases a Court might go further, and inquire into the merits of the case, and determine the guilt or innocence of the accused party, or at all events ascertain whether the offence for which the trial is had, comes within any prohibitory law of the body, or whether it is not of so trivial or absurd a nature as to be unreasonable, and therefore unpunishable.

In the case before us, the plaintiff complains that he has been unjustly and illegally tried and punished by the Crawford County Medical Society, of which the defendants are officers

and members ; that he was charged with conduct which was no offense against the laws of the society ; that, notwithstanding his acquittal in the only lawful forum in which he could be tried, he was expelled from the society by the defendants, and he therefore prays for relief and that a mandatory injunction may issue against the defendants, requiring them to reinstate him in membership.

A good deal of space in the testimony, master's report and argument of counsel, has been taken up on the inquiry of the guilt or innocence of the plaintiff of the charges preferred against him. In the view I take of the case, it is unnecessary to do more than allude to this portion of the case by saying, that so far as I can see, the plaintiff has not been guilty of violating any of the laws of the society of which he was a member ; that the charges and specifications are of a very trifling nature, and not worthy the serious attention of gentlemen of the position and reputation of these defendants. However this may be, the point was largely one of etiquette and casuistry, and with this I shall take no concern.

The facts and the conclusion at which I have arrived, is this: The charges and specifications thereof were, by the society, referred to a body of officers of the society, known as the censors, and by that tribunal were duly examined, and the plaintiff was duly tried by the censors under these charges, and was found not guilty thereof. This body of censors was the only tribunal that had any jurisdiction to hear and determine the charges, and to pronounce the guilt or innocence of the accused, and that body dismissed the charges and acquitted the plaintiff. I do not deem it necessary to quote at length the several sections and articles of the society's constitution involved, as this has been so done by the master in his report.

The language of article VII is plain in its enactments, and provides for the trial of accused members by the board of censors, and by this board only. Punishment is to be inflicted by the society itself, but only after a conviction by the censors. A court may only pass sentence upon a person found guilty by a jury. Upon the very loosest construction of article VII the board of censors has at least the authority and powers of an inquiring body, or as a grand jury ; and, as such, the board dismissed the charges. This, therefore, was the end of the matter, and was as if a grand jury had ignored a bill of indictment, and then the functions of a court to hear and determine could never be exercised. Nothing to be found in section 5 of article VI is opposed to the construction I give to article VII. The former section is indeed rather confirmatory of it, for it refers to the duties of the elective officers of the society, and not at all to the discipline of members.

The right of appeal allowed in certain cases by section 2, article VIII, cannot be made to apply to this case, for no member was prejudiced or placed in an improper light by the report of the censors, and, moreover, no one took any appeal from the report. I only allude, in passing, to the claim made by plaintiff of the further illegality of the vote for expulsion, because one of his accusers voted against him, and in this way only was the two-thirds majority secured, and say that the claim of illegality seems to be well founded on the principle of the well-known maxim: *Nemo debet esse judex in propria sua causa.*

The district censors and the state board might well have decided this point against the right. The record does not show, however, that the appeal of the plaintiff to these high powers was ever determined at all. Yet, with all these imperfections, the court has nothing to do, because of the error which goes to the foundation of the whole case.

The radical and constitutional error to be found in the case is this:

This plaintiff, as the accused person, was duly tried by the only constitutional court that had authority to try him, and by that court he was found not guilty of any offense. The society had no right nor authority to try him after an acquittal, and had no right to punish an innocent party. The whole proceedings had by the society, after it had received the report or verdict of the board of censors, were outside of any lawful authority, and therefore invalid. The vote of expulsion must be pronounced void, and this plaintiff must be restored to full membership in the Crawford County Medical Society. The exceptions to the master's report are all overruled and his report confirmed.

Let a final decree be made accordingly. *Per Curiam,*

PEARSON CHURCH.

February 14, 1887.